

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

JAMES L. McCURRY,

Petitioner,

v.

3:06-cv-332

DAVID MILLS, Warden,

Respondent.

**MEMORANDUM AND ORDER**

This is a *pro se* petition for the writ of habeas corpus pursuant to 28 U.S.C. § 2254, filed by a prisoner serving a life term for first degree murder. Petitioner has filed a motion for discovery and a motion for additional time within which to respond to the respondent's answer to the habeas petition after the court has ruled on his motion for discovery.

The respondent has provided the court with copies of petitioner's proceedings on direct appeal and in post-conviction, including the technical records, transcripts, briefs of the parties, and opinions of the state courts. In his request for discovery, petitioner asks that the respondent provide the court and petitioner with all news articles from the file kept by petitioner's former trial counsel with respect to his criminal case. Petitioner seeks this discovery to support his claim that trial counsel rendered ineffective assistance of counsel by failing to move for a change of venue based upon pretrial publicity.

Petitioner moves for discovery pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, which are applicable to habeas corpus proceedings. *See* Rule 11 of the Rules Governing Section 2254 Cases In The United States District Courts. While petitioner seeks discovery from respondent, there is nothing in the record to suggest respondent (or the Attorney General for the State of Tennessee, who represents the respondent) has in his possession news articles from the files of petitioner's former trial counsel.

Nevertheless, petitioner's motion for discovery [Court File No. 11] is **GRANTED** to the extent the Attorney General is **ORDERED** to provide the court and petitioner with copies of any news articles relevant to petitioner's criminal case that the Attorney General has in his possession. It should be noted that the court is not ordering the Attorney General to obtain the news articles from petitioner's former counsel, but only to provide what is in the files of the Attorney General for the State of Tennessee. The Attorney General is further **ORDERED** to respond to this Order with thirty (30) days, either by providing the copies of news articles in his possession or by stating on the record that he does not have such documents in his possession.

Petitioner's motion for extension of time [Court File No. 10] is **GRANTED**. Petitioner shall have twenty (20) days, from the date of respondent's response to this order, in which to file his response to the respondent's answer.

**E N T E R:**

s/ Thomas W. Phillips  
United States District Judge